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§ 4.210 Commencement of probate.

The probate of a trust estate before an OHA deciding official will commence when the probate specialist or BIA deciding official files with the OHA deciding official all information shown in the records relative to the family of the deceased and his or her property. The information must include the complete probate package described in 25 CFR 15.104 and 15.202 and any other relevant information. The agency or BIA deciding official must promptly transmit to the OHA deciding official any creditor's or other claims that are received after the case is transmitted to the OHA deciding official, for a determination of their timeliness, validity, priority, and allowance under §§ 4.250 and 4.251.

§ 4.211 Notice.

(a) An OHA deciding official may receive and hear evidence at a hearing to determine the heirs of a deceased Indian or probate his or her will only after the OHA deciding official has caused notice of the time and place of the hearing to be posted at least 20 days prior to the hearing date in five or more conspicuous places in the vicinity of the designated place of hearing, and the OHA deciding official may cause postings in such other places and reservations as he or she deems appropriate. A certificate showing the date and place of posting must be signed by the person or official who performs the act.

(b) The OHA deciding official must serve or cause to be served a copy of the notice on each party in interest known to the OHA deciding official and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his or her last known address, in sufficient time in advance of the date of the hearing to enable the addressee served to attend the hearing. The OHA deciding official must cause a certificate, as to the date and manner of such mailing, to be made on the record copy of the notice.

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(c) All parties in interest, known and unknown, including creditors, will be bound by the decision based on such hearing if they lived within the vicinity of any place of posting during the posting period, whether they had actual notice of the hearing or not. As to those not within the vicinity of the place of posting, a rebuttable presumption of actual notice will arise upon the mailing of such notice at a reasonable time prior to the hearing, unless the said notice is returned by the postal service to the office of the OHA deciding official unclaimed by the addressee.

(d) Tribes to be charged with notice of death and probate. When a record reveals that a Tribe has a statutory option to purchase interests of a decedent, such Tribe must be notified of the pendency of a proceeding by the the OHA deciding official having probate jurisdiction in such proceeding, and the certificate of mailing of notice of probate hearing or of a final decision in probate to the Tribe at its record address will be conclusive evidence for all purposes that the Tribe had notice of decedent's death and notice of the pendency of the probate proceedings.

§ 4.212 Contents of notice.

(a) In the notice of hearing, the OHA deciding official must specify that at the stated time and place the OHA deciding official will take testimony to determine the heirs of the deceased person (naming him or her) and, if a will is offered for probate, testimony as to the validity of the will describing it by date. The notice must name all known presumptive heirs of the decedent, and, if a will is offered for probate, the beneficiaries under such will and the attesting witnesses to the will. The notice must cite this subpart as the authority and jurisdiction for holding the hearing, and must inform all persons having an interest in the estate of the decedent, including persons having claims or accounts against the estate, to be present at the hearing or their rights may be lost by default.

(b) The notice must state further that the hearing may be continued to another time and place. A continuance

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may be announced either at the original hearing by the OHA deciding official or by an appropriate notice posted at the announced place of hearing on or prior to the announced hearing date and hour.

DEPOSITIONS, DISCOVERY, AND PREHEARING CONFERENCE

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§4.220 Production of documents for inspection and copying.

(a) At any stage of the proceeding prior to the conclusion of the hearing, a party in interest may make a written demand, a copy to be filed with the OHA deciding official, upon any other party to the proceeding or upon a custodian of records on Indians or their trust property, to produce for inspection and copying or photographing, any documents, papers, records, letters, photographs, or other tangible things not privileged, relevant to the issues which are in the other party's or custodian's possession, custody, or control. Upon failure of prompt compliance, the OHA deciding official may issue an appropriate order upon a petition filed by the requesting party. At any time prior to closing the record, the OHA deciding official upon his or her own motion, after notice to all parties, may issue an order to any party in interest or custodian of records for the production of material or information not privileged, and relevant to the issues.

(b) Custodians of official records will furnish and reproduce documents, or permit their reproduction, in accordance with the rules governing the custody and control thereof.

§4.221 Depositions.

(a) *Stipulation.* Depositions may be taken upon stipulation of the parties. Failing an agreement therefor, depositions may be ordered under paragraphs (b) and (c) of this section.

(b) *Application for taking deposition.* When a party in interest files a written application, the OHA deciding official may at any time thereafter order the taking of the sworn testimony of any person by deposition upon oral exam-

ination for the purpose of discovery or for use as evidence at a hearing. The application must be in writing and must set forth:

(1) The name and address of the proposed deponent;

(2) The name and address of that person, qualified under paragraph (d) of this section to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination, which must be at least 20 days after the date of the filing of the application; and

(4) The reasons why such deposition should be taken.

(c) *Order for taking deposition.* If after examination of the application the OHA deciding official determines that the deposition should be taken, he or she will order its taking. The order must be served upon all parties in interest and must state:

(1) The name of the deponent;

(2) The time and place of the examination which must not be less than 15 days after the date of the order except as stipulated otherwise; and

(3) The name and address of the officer before whom the examination is to be made. The officer and the time and place need not be the same as those requested in the application.

(d) *Qualifications of officer.* The deponent must appear before the OHA deciding official or before an officer authorized to administer oaths by the law of the United States or by the law of the place of the examination.

(e) *Procedure on examination.* The deponent must be examined under oath or affirmation and must be subject to cross-examination. The testimony of the deponent must be recorded by the officer or someone in the officer's presence. An applicant who requests the taking of a person's deposition must make his or her own arrangements for payment of any costs incurred.

(f) *Submission to witness; changes; signing.* When the testimony is fully transcribed, the deposition must be submitted to the deponent for examination and must be read to or by him or her, unless such examination and reading are waived by the deponent or by all other parties in interest. Any changes in form or substance which the